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*C. R. Bard, Inc. and*  
*Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability  
Litigation,

This Document Relates to:  
  
Lisa Hyde, et al. v. C. R. Bard, Inc., et al.  
CV-16-00893-PHX-DGC

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION IN  
LIMINE NO. 4 TO EXCLUDE  
TESTIMONY ABOUT  
PERSONAL OPINIONS OF  
DR. MUEHRCKE**

(Assigned to the Honorable David G.  
Campbell)

1 Bard moves *in limine* to exclude personal opinion testimony and conjecture by  
 2 Plaintiff's expert Dr. Derek Muehrcke (and all of Plaintiffs' experts), by respectfully  
 3 showing the Court as follows:

4 **ARGUMENT AND CITATION OF AUTHORITY**

5 One of Plaintiffs' retained experts, Dr. Derek Muehrcke, previously testified in  
 6 response to a question about whether he still used Bard filters, that he "personally felt  
 7 betrayed" because Bard had not told physicians about the information contained in the  
 8 internal documents he was provided to review as a retained expert, and that he has a  
 9 "moral and ethical issue" with how Bard addressed adverse events. (*Jones* transcript,  
 10 760:9-17, attached as Exhibit "A"). That testimony, and any similar to it, should be  
 11 excluded because is it not proper expert testimony and any probative value is substantially  
 12 outweighed by the prejudicial effect of the testimony.

13 Federal Rule of Evidence 702 sets forth the specific requirements for expert  
 14 testimony to be admissible. Dr. Muehrcke's injection of his personal opinions and beliefs  
 15 do not meet those requirements.<sup>1</sup> A retained expert is required to offer objective and  
 16 reliable opinions, not personal opinions or conjecture. Expert testimony based on  
 17 subjective beliefs is not admissible. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579,  
 18 590, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). The Ninth Circuit has expressly ruled that  
 19 personal opinion testimony by an expert witness is "inadmissible as a matter of law under  
 20 Rule 702." *Ollier v. Sweetwater Union High School District*, 768 F.3d 843, 861 (9<sup>th</sup> Cir.  
 21 2014). As such, Dr. Muehrcke (and all of Plaintiffs' experts) should be precluded from  
 22 offering any personal opinions, including those testified to previously.

23 The testimony should also be excluded under Federal Rule of Evidence 403.  
 24 Dr. Muehrcke's personal comments and conjecture on Bard's internal documents and  
 25 processes have no relevance to the claims in this case. There is no longer a failure to warn  
 26 claim pending in this case, but Dr. Muehrcke's testimony relating to his opinions of  
 27 "betrayal" and "moral and ethical issue" are based on the fact that he read documents as a  
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<sup>1</sup> Bard also notes that these opinions were not included in Dr. Muehrcke's Rule 26 report.

retained expert and the information in those documents was “not relayed to physicians in their marketing material or through their representatives...” (Muehrcke 760:4-5). As such, the testimony is not relevant and has no probative value because it relates solely to a failure to warn claim. Further to the extent the Court finds that there is any probative value to his conjecture, it is substantially outweighed by the prejudicial impact those inflammatory statements will have on the jury. Consequently, neither Dr. Muehrcke nor any of Plaintiffs’ experts should be allowed to attempt to inject their personal “opinions” or beliefs in the case.

### **CONCLUSION**

For these reasons, Bard respectfully requests that the Court grant its Motion.

RESPECTFULLY SUBMITTED this 10th day of August, 2018.

s/ Richard B. North, Jr.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of August, 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

s/Richard B. North, Jr.  
Richard B. North, Jr.